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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,949	04/21/2004	Willis J. Mullet	WAY.P.US0071	7173

7590 07/16/2007
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Akron, OH 44308-1456

EXAMINER

REDMAN, JERRY E

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/828,949	Applicant(s) MULLET ET AL.	
	Examiner Jerry Redman	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 4-19 is/are allowed.
- 6) ☒ Claim(s) 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Vincenzi (5,698,073). Vincenzi (5,698,073) discloses an operator used in connection with a door having a counterbalance system including an axle (22), comprising a motor (38), a gear assembly (90) with a bore or channel that receives the axle, and a gear segment (94) that is removable to radially open the gear assembly and allow insertion of the axle. A drive gear (80) rotates with the motor and engages the gear assembly (90) through a drive train (88). The gear segment (94) can be slidably received and can be removed in a direction parallel to the axle. The gear assembly includes a hub, a rim and a gear surface formed on the rim and engaged with the drive gear. The gear segment includes a removable gear portion and a removable hub portion. The hub is divided into two halves (see figure 3). The gear segment is attached to the gear assembly by fasteners (96 and 98) attached at tabs.

Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Mullet (6,568,454). Mullet (6,568,454) discloses an operator used with a counterbalance system having an axle, a motor (340), a worm wheel (397) engaging the motor, and a

coil spring (401) located coaxially with the worm wheel (397) and engaged to counterbalance the weight of the motor toward an unlocked position.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vincenzi (5,698,073) in view of Mullet (6,568,454). All of the elements of the instant invention are discussed in detail above except providing a motor which is pivotally mounted. Mullet (6,568,454) discloses a motor used with a door operator and counterbalance system that is pivotally mounted. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the motor/counterbalance assembly of Vincenzi (5,698,073) with a pivotally mounted motor as taught by Mullet (6,568,454) since this allows one to easily work on and/or remove the motor assembly.

Claims 1, and 4-19 are allowable.

The applicant's arguments have been considered but are not deemed persuasive. It appears that the applicant's arguments are more limiting than that of the claims. The "for" and "adapted" to phraseology is intended use and fails to clearly and positively set forth the invention. Furthermore, the applicant appears to be arguing

limitations and results that are neither in the claims or sets forth the limitation in a means plus function manner.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Redman whose telephone number is 571-272-6835. The examiner can normally be reached on m-f from 8 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glessner, can be reached on 571-272-8300. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jerry Redman
Primary Examiner

Jerry Redman
Primary Examiner
Art Unit 3634